

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:	Robert STONER et al.	Confirmation No.: 3775
Application No.:	10/725,505	Examiner: Tran, M.
Filed:	December 3, 2003	Group Art Unit: 2179
Customer No.:	25537	
Attorney Docket No.:	COS97083C1	
Client Docket No.:	09710_1368	

For: ALARM MONITORING SYSTEM FOR A TELECOMMUNICATIONS NETWORK

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

Applicants respectfully request a pre-appeal brief review be made of the present application for at least the following clear errors.

I. THE REFERENCE TO *DEV ET AL.* FAILS TO DISCLOSE THE CLAIMED FEATURE OF “THE NETWORK ELEMENT SUBSYSTEMS INCLUDING CONSOLE CONNECTIONS AND APPLICATION CONNECTIONS.”

The Examiner contends that *Dev et al.* (US 5,504,921) discloses console connections and application connections by arguing “the network portions in buildings 42 and 48 being interconnected by a bridge 50. A building 52 remotely located from buildings 42 and 48 contains network devices 53, 54, 55 and 56 are interconnected by a data bus 57. The network device in building 52 are interconnected to the network in building 48 by interface devices 59 and 60 which

may communicated by a packet switching system, a microwave link or a satellite link..." [sic] (Advisory Action of March 27, 2008-paragraph 11). The Examiner concludes that *Dev et al.* "clearly teaches that messages are generated by console connection and application connections because the system teaches a telecommunications protocol providing specifications for emulating a remote computer terminal so that one can access a distant computer and function online using an interface that appears to be part of the user's local system."

The Examiner's rationale is clearly based on speculation as no console connections and application connections have been identified in *Dev et al.* by the Examiner, nor can they be identified because *Dev et al.* discloses no such connections. Applicants would point out that the present rejection of claims 1-38 is based on anticipation under 35 U.S.C. §102. A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See *Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). Clearly, there is no **express** disclosure of console connections and application connections in *Dev et al.*, so the Examiner must be relying on some inherency of these claimed elements within the *Dev et al.* system. However, inherency may not be established by probabilities or possibilities. In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). In order for such console connections and application connections to be inherent in *Dev et al.*, these connections must, **necessarily**, be there. Of course, even if such connections **could** be applicable to the system of *Dev et al.*, they are not **necessarily** required for the system of *Dev et al.* to operate. Accordingly, the claimed console connections and application connections are neither expressly nor inherently

disclosed by *Dev et al.* and, therefore, the instant claimed subject matter cannot be anticipated by *Dev et al.* Therefore, the pre-appeal review panel is respectfully requested to withdraw the rejection of claims 1-38 under 35 U.S.C. §102.

II. THE REFERENCE TO *DEV ET AL.* FAILS TO DISCLOSE THE CLAIMED FEATURE OF “MEANS FOR MAPPING TEXT OF A RECEIVED ORIGINAL MESSAGE TO ONE OR MORE OF A PLURALITY OF ALARM ATTRIBUTES.”

While the Examiner did not respond to this argument in the Advisory Action, the Examiner indicated in the Final Rejection of January 3, 2008, at page 3, that the “mapping text” feature is to be found at col. 4, lines 54-65, and col. 12, lines 32-50, of *Dev et al.* However, there is clearly no teaching of the claimed mapping at the cited portion of column 4, as this relates only to servicing user requests and providing network information, e.g., alarms, to a user interface. With regard to the cited portion of column 12, the only reference to a “map” in this section of the reference relates to a “map 300 of the northeast region,” indicative of a geographical map, and not a mapping of text of an original message to one or more of a plurality of alarm attributes. Moreover, to the extent that there is any mapping to alarm attributes disclosed by *Dev et al.*, an assumption with which Applicants do not agree, there is clearly no mapping of **text** of a received original message to one or more of a plurality of alarm attributes.

Applicants again note that the rejection is based on anticipation under 35 U.S.C. §102. As such, the Examiner should be able to point to something specific within the disclosure of *Dev et al.* that serves the function of mapping text of a message to one or more of a plurality of alarm attributes, but the Examiner has not done this, and cannot do this, because there is absolutely no such disclosure in *Dev et al.* The Examiner resorts to attacking the language of the claim, i.e., “mapping text...” as “a broad term” but if the “mapping” language of the claims is as broad as

the Examiner alleges, the Examiner should have no problem explaining how this term is being interpreted within the context of the reference. Yet, the Examiner has not done this, preferring instead to identify two portions of the reference and leaving it to Applicants to speculate as to what meaning the Examiner is giving to the claim language.

With regard to the Examiner's allegation that the "mapping" language is "not specific and clear enough...," (Final Rejection of January 3, 2008-page 8), this is irrelevant to a rejection under 35 U.S.C. §102. If the language is not specific or clear enough, the rejection should be under 35 U.S.C. §112, second paragraph, and not under 35 U.S.C. §102. *Cf. In re Steele*, 305 F.2d 859, 134 USPQ 292 (CCPA 1962). However, the claim language **is** very specific. It clearly calls for the mapping of text of a received message to one or more of a plurality of alarm attributes. Therefore, the pre-appeal review panel is respectfully requested to withdraw the rejection of claims 1-38 under 35 U.S.C. §102.

III. CONCLUSION

For at least the foregoing reasons, the Appeal Brief Panel is respectfully requested to withdraw the rejection of the present application in light of these clear errors and allow the pending claims.

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Respectfully Submitted,

DITTHAVONG MORI & STEINER, P.C.

May 2, 2008

Date

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